

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SIERRA LATIMER
Plaintiff

VS.

FERNANDA GARCIA AND
ALLSTATE FIRE AND CASUALTY
INSURANCE COMPANY
Defendant

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CIVIL ACTION NO: 5:20-CV-00864

**DEFENDANT, ALLSTATE FIRE AND CASUALTY INSURANCE
COMPANY'S, NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF THE UNITED STATES DISTRICT COURT:

Please take notice that Defendant, ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY, pursuant to 28 U.S.C. §§1332(a), 1441(a), 1446 and the applicable Local Rules of the Western District of Texas, hereby removes to this Court the state court action described below, on the grounds of diversity of citizenship and amount in controversy, and respectfully shows the Court as follows:

BACKGROUND

1. On April 1, 2019, an action was commenced in the 73rd Judicial District Court of the State of Texas in and for Bexar County, Texas, entitled SIERRA LATIMER vs. FERNANDA GARCIA with Cause No. 2019-CI-06627. On June 4, 2020, Plaintiff filed her First Amended Petition in this cause number entitled SIERRA LATIMER vs. FERNANDA GARCIA AND ALLSTATE FIRE AND CASUALTY INSURANCE COMPANY ("Allstate"). A copy of Plaintiff's First Amended Petition and Service of Citation is attached hereto as **Exhibit A**.

2. Plaintiff served Defendant Allstate with Plaintiff's First Amended Petition and process on July 10, 2020, by certified mail on its registered agent. See Exhibit A.
3. Plaintiff asserts causes of action on behalf of herself for negligence. See *Plaintiff's First Amended Petition*, Exhibit A, § 11. Plaintiff affirmatively pleads for damages "over \$1,000,000." *Id.*, § 18.
4. Plaintiff has demanded a jury trial. *Id.*, § 20.
5. Defendant, Allstate, filed an Original Answer on July 24, 2020, a copy of which is attached hereto as **Exhibit B**. Defendant, Allstate, served a Court Advisory on July 24, 2020, a copy of which is attached hereto as **Exhibit C**.

GROUND FOR REMOVAL

6. This Court has original jurisdiction of this suit based on 28 U.S.C. §1332(a) because this suit involves a controversy between citizens of different states and there is complete diversity between the parties at the time of the filing of the suit and at the time of the removal. Furthermore, the amount in controversy, exclusive of interest and costs exceeds \$75,000.00.

A. Parties are Diverse

7. Plaintiff is a natural person who affirmatively alleges that she resides in Atascosa County, Texas. See Exhibit A, § 2. Plaintiff has not plead any other facts of her residency, intention to leave Texas, or domiciles in other states. *Id.* Accordingly, Plaintiff's citizenship at the time of the filing of the suit and at the time of removal is properly established as the State of Texas. See *Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011).
8. Defendant Allstate Fire and Casualty Insurance Company is an Illinois corporation with its principal place of business in Illinois and is a citizen of the State of Illinois.

9. Defendant Fernanda Garcia was dismissed on June 25, 2020. Therefore, the only remaining parties are diverse. *Order Granting Motion to Dismiss with Prejudice* attached as **Exhibit D**.

10. Based on the foregoing, there is complete diversity between the parties.

B. Amount in Controversy

11. The party seeking federal jurisdiction must prove by a preponderance of the evidence that the amount in controversy exceeds \$75,000.00. *Grant v. Chevron Phillips Chem. Co. L.P.*, 309 F.3d 864, 868 (5th Cir. 2002). The removing party may satisfy its burden by either (1) demonstrating that it is “facially apparent” from the petition that the claim likely exceeds \$75,000.00, or (2) “by setting forth the facts in controversy – preferably in the removal petition, but sometimes by affidavit – that support a finding of the requisite amount.” *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5th Cir. 1995).

12. Here, it is facially apparent from Plaintiff’s petition that the amount in controversy exceeds \$75,000.00. Specifically, Plaintiff’s petition states:

Plaintiff seeks:

- a. monetary relief over \$1,000,000.00.

Exhibit A, § 18.

13. Based on the foregoing, the amount in controversy exceeds \$75,000.00.

REMOVAL IS PROCEDURALLY PROPER

14. This notice of removal is timely filed within thirty (30) days after service of process upon Defendant. *See* U.S.C. §1446(b)(1).

15. Venue is proper in this Court under 28 U.S.C. §1441(a) because the San Antonio Division of the United States District Court for the Western District of Texas embraces Bexar County, Texas, the place where the State Court suit was filed.
16. The undersigned has served notice of the removal of this action on Plaintiff by serving counsel for Plaintiff with this Notice of Removal and has filed a copy of this Notice of Removal with the Bexar County District Clerk in the State Action. A copy of the *Notice to the Court of Removal to Federal Court* is attached hereto as **Exhibit E**.
17. Pursuant to 28 U.S.C. §1446(a), all pleadings, process and orders served upon Defendant in the state court are attached hereto as **Exhibit A**.

PRAYER FOR RELIEF

18. Defendant Allstate Fire and Casualty Insurance Company respectfully requests that the Court accept jurisdiction over the state court action for the reasons set forth above, that this case be entered upon the docket of the United States District Court for the Western District of Texas, pursuant to 28 U.S.C. §§1441 and 1446, and grant Defendant any such other and further relief to which it may show itself justly entitled.

Respectfully submitted,

PAUL GARCIA & ASSOCIATES
1901 N.W. Military Hwy., Ste. 218
San Antonio, Texas 78213
T: (210) 340-1818
F: (210) 340-4073
E: service@pgtxlaw.com

/s/ Clarkson F. Brown
CLARKSON F. BROWN
State Bar No. 00798082
PAUL GARCIA
State Bar No. 00798199
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with the Federal Rules of Civil Procedure, this *24th day of July 2020* on the following counsel of record, properly addressed as follows:

Scott Brooks
Law Offices of Thomas J. Henry, PLLC
5711 University Heights, Suite 101
San Antonio, TX 78249
ATTORNEYS FOR PLAINTIFF

Served via: e-mail message generated by the CM/ECF E-Filing system on:
sbrooks-svc@thomasjhenrylaw.com

/s/ Clarkson F. Brown

CLARKSON F. BROWN